

1 IN THE UNITED STATES DISTRICT COURT FOR THE  
2 NORTHERN DISTRICT OF OKLAHOMA  
3  
4

5 W. A. DREW EDMONDSON, in his )  
6 capacity as ATTORNEY GENERAL )  
7 OF THE STATE OF OKLAHOMA and )  
8 OKLAHOMA SECRETARY OF THE )  
9 ENVIRONMENT C. MILES TOLBERT, )  
10 in his capacity as the )  
11 TRUSTEE FOR NATURAL RESOURCES )  
12 FOR THE STATE OF OKLAHOMA, )

13 Plaintiff, )

14 vs. )

15 TYSON FOODS, INC., et al, )

16 Defendants. )

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18 VOLUME II OF THE VIDEOTAPED  
19 DEPOSITION OF BERTON FISHER, PhD, produced as a  
20 witness on behalf of the Defendants in the above  
21 styled and numbered cause, taken on the 4th day of  
22 September, 2008, in the City of Tulsa, County of  
23 Tulsa, State of Oklahoma, before me, Lisa A.  
24 Steinmeyer, a Certified Shorthand Reporter, duly  
25 certified under and by virtue of the laws of the  
State of Oklahoma.

1 (Whereupon, the deposition began at  
2 9:00 a.m.)

3 VIDEOGRAPHER: We are now on the Record for  
4 Volume II of the deposition of Berton Fisher. Today  
5 is September 4th, 2008. The time is 9:00 a.m. 09:00AM  
6 Would counsel please identify themselves for the  
7 Record.

8 MR. GARREN: Richard Garren for the State  
9 of Oklahoma.

10 MR. GEORGE: Robert George for the Tyson 09:00AM  
11 defendants.

12 MR. McDANIEL: Scott McDaniel for Peterson  
13 Farms, Inc.

14 MR. ELROD: John Elrod for Simmons.

15 MR. BASSETT: Woody Bassett for the 09:00AM  
16 George's defendants.

17 MS. HILL: Theresa Hill for the Cargill  
18 entities.

19 VIDEOGRAPHER: Thank you.

20 BERTON FISHER, PhD,  
21 having first been duly sworn to testify the truth,  
22 the whole truth and nothing but the truth, testified  
23 as follows:

24 CONTINUED DIRECT EXAMINATION

25 BY MR. GEORGE: 09:00AM

1 in the plant matter and actually transport it and  
2 deposit it as more soluble phosphorus in manure in  
3 or near water courses?

4 MR. GARREN: Object to form.

5 Q That's not part of your evaluation? 11:50AM

6 A It is not.

7 Q Let's see. Your report, Page 4, you covered  
8 this with Mr. George yesterday. You said the only  
9 contaminants of concern in the Illinois River  
10 watershed are phosphorus and bacteria; correct? 11:51AM

11 A That's what I said, yes.

12 Q All right. What is the form of phosphorus  
13 that is the contaminant of concern?

14 A All forms of phosphorus are going to be the  
15 contaminant of concern because phosphorus undergoes 11:51AM  
16 numerous reactions with environmental media. So  
17 adding phosphorus in one form today, it can turn  
18 into a form that's taken up by algae tomorrow in a  
19 stream.

20 Q With the bulk of the water quality data, is 11:51AM  
21 this most oftenly expressed as total P?

22 A That's correct.

23 Q Okay. So when -- there have been a lot of  
24 discussion in the last two days about phosphorus,  
25 phosphorus, phosphorus. What typically you and 11:51AM

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1 When you and I started talking earlier, I thought  
2 the Record was pretty clear that the constituents of  
3 concern are phosphorus and bacteria. When you say  
4 constituents in the context of your statement on  
5 Page 50, are you referring to anything else other 02:30PM  
6 than phosphorus and bacteria?

7 A These would be the entirety of the suite of  
8 chemicals pretty much from poultry litter.

9 Q Are you claiming that there is water in the  
10 Illinois River watershed that is polluted by any 02:30PM  
11 constituent other than phosphorus and bacteria?

12 MR. GARREN: Object to the form.

13 A Okay. Am I claiming that there are any  
14 constituents of concern other than phosphorus and  
15 bacteria? 02:30PM

16 Q Yeah.

17 A No.

18 Q All right. Opinion 21, you refer to -- or I'm  
19 going to modify the word, attenuation. What is  
20 attenuation or attenuated mean? 02:31PM

21 A To attenuate is to diminish. The peculiar  
22 aspect of Karst terrain, which is what this speaks  
23 to, is that materials in Karst, there are very --  
24 there can be very large fractures at depth. Those  
25 fractures permit a flow of water much as through a 02:31PM

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1     **A**       I don't know what -- I'm sorry. I don't know  
2     what to assume, Mr. Elrod. I just can report what I  
3     saw in those fields.

4     **Q**       Now, you testified twice in the last two days  
5     that the contaminants of concern in this case are                     04:54PM  
6     phosphorus and bacteria; correct?

7     **A**       That's correct.

8     **Q**       Now, I have to prepare a defense for my client  
9     at the trial of this case. You understand that?

10    **A**       Yes, I do.   04:54PM

11    **Q**       Does that mean that I don't have to be  
12    concerned about preparing a defense for metals?

13             MR. GARREN: Object to form.

14    **A**       You mean metals as pollutants?

15    **Q**       Yes, sir.   04:54PM

16    **A**       That's correct.

17    **Q**       And does that assume that I do not have to  
18    prepare a defense for my client regarding hormones?

19             MR. GARREN: Object to the form.

20    **A**       Well, I've never offered any opinion on                     04:54PM  
21    hormones, nor do I know of any experts who have.

22    **Q**       Does that assume then -- can I assume then I  
23    do not have to prepare a defense for my client  
24    regarding hormones?

25             MR. GARREN: Object to form.                             04:55PM

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1     **A**       I don't believe you do.

2     **Q**       And then does that also assume that I do not  
3     have to prepare a defense for my client regarding  
4     nitrogen?

5               MR. GARREN: Object to form. 04:55PM

6     **Q**       Especially nitrogen impact on groundwater?

7               MR. GARREN: Same objection.

8     **A**       I don't know. I don't believe so.

9     **Q**       And does that also -- can I also assume that I  
10    do not have to prepare a defense for my client on 04:55PM  
11    the issue of antimicrobial effects?

12              MR. GARREN: Object to form.

13    **A**       Could you define antimicrobial effects?

14    **Q**       I can't any better than I just said it.

15    **A**       Okay. If you are talking about a defense of 04:55PM  
16    your client with respect to the presence of  
17    antibiotic materials in litter --

18    **Q**       Yes, sir.

19    **A**       -- I don't believe so.

20    **Q**       All right. If you'd look at your report on 04:55PM  
21    Table 1, I didn't note the page.

22    **A**       Table 1?

23    **Q**       Yes, sir. It should be the growth in chicken  
24    production in the Illinois River watershed.

25    **A**       I have that, yes, sir. 04:56PM